

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA06-479

December 20, 2006

RICCO K. BURMAN
APPELLANT

AN APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[No. CIV-2005-1690-2]

V.

HON. DAVID S. CLINGER, JUDGE

WARREN ZEBEL
APPELLEE

AFFIRMED

Ricco Burman appeals from an order of the Benton County Circuit Court granting summary judgment in favor of appellee Warren Zebel, which was based upon a finding that a legal description in a Commissioner's Deed in favor of appellant was incomplete. He argues that the circuit court erred in granting summary judgment, contending that the legal description was not incomplete. We affirm.

The property in question is at 1904 Oakwood Drive, Bentonville. Appellant filed an ejectment action on September 19, 2005, alleging that he was the owner of Bentonville property formally owned by appellee.¹ The complaint stated that appellant acquired title to

¹The complaint also alleged an action for unlawful detainer, but after a hearing on the issue, the circuit court dismissed the unlawful-detainer claim and proceeded on the ejectment claim only.

the property by virtue of a Commissioner's Deed, which described the property as follows:

PT LOT 11 SD C6

Section: 19 Township: 20N Range: 30W Acres: 0

Addition: Oakwood Heights City: Bentonville

Parcel Number: 01-03508-000[.]

Appellee filed a motion for summary judgment on October 24, 2005, alleging that he was the record owner of the property and that the description in appellant's deed was incomplete, rendering the deed void. After hearing arguments from the parties, the circuit court entered an order on March 8, 2006, granting appellee's motion for summary judgment. The court found that the legal description in the Commissioner's Deed was incomplete and thus void. The court ordered the Commissioner of State Lands to cancel the Commissioner's Deed and return the money paid by appellant for the property.

Appellant argues that the circuit court erred in granting appellee's motion for summary judgment. He contends that the legal description in the Commissioner's Deed was sufficient because the Deed references a specific lot within an established subdivision. He further contends that the legal description was sufficient because appellee had notice of the charge against the property.

Summary judgment should be granted only when there are clearly no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. *Riverdale Dev. Co. v. Ruffin Bldg. Sys. Inc.*, 356 Ark. 90, 146 S.W.3d 852 (2004). The burden of sustaining a motion for summary judgment is the responsibility of the moving party. *Pugh v. Griggs*, 327 Ark. 577, 940 S.W.2d 445 (1997). Normally, we determine if

summary judgment was appropriate based on whether the evidence presented by the moving party in support of its motion leaves a material fact unanswered, viewing the evidence in the light most favorable to the nonmoving party, resolving all doubts and inferences against the moving party. *George v. Jefferson Hosp. Ass'n Inc.*, 337 Ark. 206, 987 S.W.2d 710 (1999); *Adams v. Arthur*, 333 Ark. 53, 969 S.W.2d 598 (1998). However, when there is no dispute on the relevant facts, we need only determine whether the moving party was entitled to judgment as a matter of law. *Southern Farm Bureau Cas. Ins. Co. v. Craven*, 79 Ark. App. 423, 89 S.W.3d 369 (2002).

A tax deed is sufficient if the description itself furnished the key through which the land might be definitely located by proof aliunde. *Liggett v. Church of Nazarene*, 291 Ark. 298, 724 S.W.2d 170 (1987). A tax deed may be declared invalid for want of a sufficient legal description of the land involved. *Payton v. Blake*, 362 Ark. 538, — S.W.3d — (2005); *see also Gardner v. Johnson*, 220 Ark. 168, 246 S.W.2d 568 (1952) (invalidating a deed containing the description: “SW corner NE 1/4 NE 1/4 Section 1, Township 7 North, Range 4 West, 5 acres E of R”); *Sutton v. Lee*, 181 Ark. 914, 28 S.W.2d 697 (1930) (recognizing as invalid the description: “Parts of lots 3 and 4 in block 36 in the city of Hot Springs, Arkansas”); *Walls v. Mills*, 149 Ark. 670, 225 S.W. 225 (1920) (invalidating a deed containing the description: “Pt. NW NW Section 7 Township 12 S, Range 29 W. 11.16 acres”). A reference to a subdivision may validate a property description. *Payton, supra*. In *Moseley v. Moon*, 201 Ark. 164, 144 S.W.2d 1089 (1940), the supreme court held as sufficient the description: “Lots 10, 11, and 12 of Block 21 W of the town of Swifton,

Jackson county, Arkansas.” The court viewed a plat of Swifton and saw only one blocked numbered 21, and the block embraced the three blocks in question.

Unfortunately for appellant, the deed in this case states “PT LOT 11,” which refers to part of a lot. The deed does not specify which part of Lot 11, which renders locating the specific land in question impossible. The circuit court was correct in finding that the description in the Commissioner’s Deed was invalid.²

Appellant also argues that the legal description is sufficient because appellee had notice of the charge against his property. He argues that appellee resided at the property in question and that the descriptions of the property during the tax sale proceedings and in the subsequent tax deed were sufficient to notify appellee of the charge against his property. However, appellee’s possession of the property does not alleviate the requirement that one must have a sufficient description in a deed to have valid title to the property. Because the description in the tax deed was insufficient, appellant does not have a valid deed.

Affirmed.

HART and BIRD, JJ., agree.

²The record contains an affidavit from the Benton County Assessor. Attached to the affidavit was a copy of the assessment card regarding the property in question, and the Assessor stated in the affidavit that one could go to the microfiche files in her office or in the circuit clerk’s office for an official copy of the deed. However, similar testimony was rejected as insufficient to identify the land in *Payton*.